



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 900 and 1200

[Document Number AMS-SC-18-0007]

Rules of Practice and Procedure Governing Marketing Orders and Marketing Agreements, and Research, Promotion, and Information Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Rules of Practice governing Marketing Orders and Marketing Agreements (MOMA), and Research, Promotion, and Information (R&P) programs overseen by the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) to include a definition of the term "mail". It also modifies an authority citation to ensure all appropriate authorities are included.

DATES: *Effective Date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: This final rule is issued under the Rules of Practice governing MOMA (7 CFR part 900) and R&P (7 CFR part 1200) overseen by USDA's AMS to include a definition of the term "mail". Currently, MOMA and R&P regulations generally use the term "mail" but do not define it. This action creates a definition of "mail" that clarifies that it includes not only transmittal of information through a postal or other delivery system, but also through electronic mail. Without this broader definition of mail, the business activities of the boards, councils, and committees that administer the programs under AMS oversight, as well as federal milk marketing order administrative activities, will be restricted to using the traditional system of physical transportation of letters and parcels.

USDA believes that an expansive definition of "mail" will create greater effectiveness and cost savings for MOMA and R&P programs. This aligns with the Secretary's goal for greater use of technology in the Department to deliver the most effective, efficient and customer-focused programs. For this reason, USDA is amending the regulations at 7 CFR part 900 and 7 CFR part 1200 to reflect "mail" as both electronic mail and postal (or otherwise delivered) mail. One of the first initiatives under this amendment is to allow for electronic voting as an option in required implementation and continuance referenda on R&P programs.

In addition, this rule will further modify authority citations for 7 CFR part 1200 to correct the current citations as some authority cites are not currently included.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals

that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Section 11 of the Beef Promotion and Research Act of 1985 (7 U.S.C. 2910) provides that it shall not preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State.

Section 524 of the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Section 121 of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4512(a)) provides that nothing in this Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

Section 1212(c) of the Hass Avocado Promotion, Research and Information Act of 2000 (7 U.S.C. 7811) provides that nothing in

this Act may be construed to preempt or supersede any program relating to Hass avocado promotion, research, industry information, and consumer information organized and operated under the laws of the United States or of a State.

Section 1930 of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6109) provides that nothing in this Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information or industry information organized and operated under the laws of the United States or any State.

Section 580 of the Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7489) provides that nothing in this Act preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State.

Section 1628 of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4817) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers. The regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Pork Act may not be imposed by a State.

Additionally, section 1974 of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6309) provides, with certain exceptions, that nothing in the Soybean Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized under the laws of the United States or any State.

According to the following authorizing acts, administrative proceedings must be exhausted before parties may file suit in court: Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674); Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411-7425); Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101-2118); Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501-4514); Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701-2718); Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401-6417); Hass Avocado Promotion, Research, and Information Act of 2000 (7 U.S.C. 7801-7813); Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101-6112); Popcorn Promotion, Research, and Consumer Information Act of 1996 (7 U.S.C. 7481-7491); Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819); Potato Research and Promotion Act of 1971 (7 U.S.C. 2611-2627); Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301-

6311); and Watermelon Research and Promotion Act (7 U.S.C. 4901-4916) .

Under those acts, any person subject to an order may file a petition with the Secretary stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The acts provide that the district courts of the United States in any district in which the person is an inhabitant, or has his principal place of business, has the jurisdiction to review the Secretary's rule, provided a complaint is filed within 20 days from the date of the entry of the ruling. There are no administrative proceedings that must be exhausted prior to any judicial challenge under the provision of the Beef Promotion and Research Act of 1985 (7 U.S.C. 2901-2911) .

Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

This final rule establishes agency rules of practice and procedure. Under the Administrative Procedure Act (APA), prior notice and opportunity for comment are not required for the promulgation of agency rules of practice and procedure. 5 U.S.C. 553 (b) (3) (A) . Only substantive rules require publication 30 days

prior to their effective date. 5 U.S.C. 553 (d). Therefore, this final rule is effective upon publication in the Federal Register.

Under 5 U.S.C. 804, this rule is not subject to Congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. In addition, because prior notice and opportunity for comment are not required to be provided for this final rule, this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

Furthermore, we have determined that the addition of a definition for the term "mail" to 7 CFR parts 900 and 1200 will not impact the current information collection burden for approved OMB forms.

List of Subjects

7 CFR Part 900

Administrative practice and procedure, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 1200

Administrative practice and procedure, Agricultural research, Reporting and recordkeeping requirements

Accordingly, 7 CFR parts 900 and 1200 are amended as follows:

PART 900—GENERAL REGULATIONS

Subpart G — Miscellaneous Requirements

1. The authority citation for part 900, subpart G, continues to read as follows:

Authority: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

2. In § 900.200, add paragraph (f) to read as follows:

§ 900.200 Definitions.

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(f) The term *mail* means to transmit either electronically or through a postal or other delivery system, information or a package (e.g., letter or envelope) to a recipient.

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PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS
UNDER RESEARCH, PROMOTION, AND INFORMATION PROGRAMS

3. The authority citation for part 1200 is revised to read as follows:

Authority: 7 U.S.C. 2101-2119, 2611-2627, 2701-2718, 2901-2911, 4501-4514, 4801-4819, 4901-4916, 6101-6112, 6301-6311, 6401-6417, 7411-7425, 7481-7491, and 7801-7813.

4. Subpart C is added to read as follows:

Subpart C - General Definitions

Sec.

1200.100 General.

1200.101 Definitions.

Authority: 7 U.S.C. 2114, 2616, 2716, 2904, 4503, 4803, 4905, 6112, 6311, 6406, 7490, 7424 and 7812.

§ 1200.100 General.

The terms defined/specified in this subpart shall apply to all research and promotion programs authorized under the Act.

§ 1200.101 Definitions.

(a) *Act* means the Commodity Research, Promotion, and Information Act of 1996 [7 U.S.C. 7411-7425]; the Beef Promotion and Research Act of 1985 [7 U.S.C. 2901-2911]; the Cotton Research and Promotion Act, as amended [7 U.S.C. 2101-2119]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501-4514]; the Egg Research and Consumer Information Act, as amended [7 U.S.C. 2701-2718]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401-6417]; the Hass Avocado Promotion, Research, and Information Act of 2000 [7 U.S.C. 7801-7813]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101-6112]; the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481-7491]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801-4819]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611-2627]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301-6311]; and the Watermelon Research and Promotion Act, as amended, [7 U.S.C. 4901-4916].

(b) *Mail* means to transmit either electronically or through a postal or other delivery system, information or a package (e.g., letter or envelope) to a recipient.

Dated: June 8, 2018.

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